

REMARKS

Applicant has reviewed the Office Action mailed September 20, 2006, and offers the following remarks to accompany the above amendments.

Status of the Claims

Claims 29-35 and 49-58 are pending. No claims are added, amended, or cancelled in this response.

Rejection of Claims 29-35 and 49-58 under 35 U.S.C. § 103(a)

Claims 29-35 and 49-58 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,717,374 to Smith (hereinafter "Smith") in view of U.S. Patent No. 6,166,734 to Nahi et al. (hereinafter "Nahi"). Applicant respectfully traverses.

For the Patent Office to combine references in an obviousness rejection, the Patent Office must do two things. First, the Patent Office must establish *prima facie* obviousness by showing where each and every element is taught or suggested in the combined references. MPEP § 2143.03. Second, the Patent Office must state a motivation to combine the references. The motivation must be supported with actual evidence which cannot come from Applicant's disclosure. *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999).

Further, "[i]t is impermissible to use the claimed invention as an instruction manual or 'template' to pieced [sic] together the teachings of the prior art so that the claimed invention is rendered obvious . . . 'one cannot use a hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.' " *In Re Fritch*, 972 F.2d 1260, 1266 (Fed. Cir. 1992), citing *In re Gorman*, 933 F.2d 982, 987 and quoting *In re Fine*, 837 F.2d at 1075.

In order to better clarify the issues involved with the present application, Applicant offers the following initial comments. Applicant respectfully submits that the Patent Office has not established a *prima facie* case of obviousness, because all limitations required by Applicant's claims are not found within the combination of Smith and Nahi. Specifically, as discussed in more detail below, Nahi does not teach or suggest an interactive graphical user interface capable of varied graphics at a fixed-location fuel dispenser without being operated in conjunction with a separate base computer. The portable devices of Nahi are operated in conjunction with a base

computer for executing an application with a predetermined operational function that generates predetermined graphics data and that operates in response to predetermined input data. As such, in order to implement a browser within the system of Nahi, the separate host (base) computer must provide full processing of information to be displayed on the portable devices. As such, the portable devices of Nahi cannot perform all of the processing, such as unencoding, decryption, and decompression, required to function as a web browser thin client. Accordingly, the Patent Office has not established a *prima facie* case of obviousness for at least these reasons.

Further, Applicant respectfully submits that even if all elements were present, a point which Applicant does not concede, there is no motivation or suggestion within either Smith or Nahi, or within the art generally as it existed at the time of the present invention as claimed, to combine Smith with Nahi or with any other reference to arrive at the claimed invention. Further, Applicant respectfully submits that both Smith and Nahi teach away from Applicant's invention as claimed and that any attempted combination will be the result of impermissible hindsight reconstruction. Each of these submissions is elaborated upon and described in more detail below. Additionally, Applicant provided detailed arguments and context within the last response, filed July 3, 2006, which is hereby incorporated by reference in its entirety as if fully set forth herein.

Nahi

Nahi teaches a portable display device operated in conjunction with a base computer for executing an application with a predetermined operational function that generates predetermined graphics data and that operates in response to predetermined input data. (See Nahi, Abstract, first sentence). As such, Nahi does not teach or suggest an interactive graphical user interface capable of varied graphics at a fixed-location fuel dispenser without being operated in conjunction with the base computer.

Furthermore, a browser implemented within the system of Nahi must provide full processing of information to be displayed on the portable devices at the separate host (base) computer. As such, the portable device of Nahi cannot perform all of the processing required to function as a web browser. For example, Nahi indicates that “[a] complication arises particularly in Web browser applications. There, the rendered display is content dependent In such circumstances, the host computer system 14 must provide for full processing of the received data in support of the otherwise ordinary operation of the application as needed to produce a finally determined impression of the information to be displayed by a display tablet 20.” (See Nahi, col.

13, ll. 5-15). Accordingly, Nahi's portable devices cannot perform all of the processing, such as unencoding, decryption, and decompression, required to function as a web browser thin client.

With reference to citations within Nahi provided by the Patent Office, the Patent Office asserts that Nahi teaches executing a browser as a thin client on said interactive graphical user interface to operate a number of portable display tablets. (See Office Action mailed September 20, 2006, p.3, citations omitted). Applicant respectfully disagrees. Nahi actually teaches away from Applicant's thin client. Nahi indicates that by allowing the user to operate a number of portable devices at end user determined locations, a new type of computer system paradigm is created that "avoids all of the disadvantages associated with a NC-type thin client." (See Nahi, col. 20, ll. 9-18). Nahi defines "NC" to be "network computer." (See Nahi, col. 1, ll. 32-33). As such, Nahi directly teaches away from the use of Applicant's thin client.

All Limitations Are Not Found Within the Combination of Smith and Nahi

Based upon the arguments presented above, Applicant respectfully submits that all of the limitations of each of Applicant's independent claims 29, 49, and 58 of the present invention are not found within Smith and Nahi, either alone or in combination.

Applicant provides a consumer with an enhanced interactive interface in the form of a web browser executed as a thin client on an interactive graphical user interface of a fueling position at a fuel dispenser. Applicant uses a markup language to present hypertext links to the consumer to allow the consumer to interactively manage navigation within the browser to make purchasing decisions. As described above, many limitations of Applicant's claims are not present within the combination of Smith and Nahi.

Smith provides a text-based, alphanumeric interface for use by a consumer at a fueling station. Smith does not teach or suggest the use of any graphical imagery, and does not teach or suggest use of a markup language to allow a consumer to interact with the system. Nahi provides a graphical interface within a portable device that provides predetermined operational function that generates predetermined graphics data and that operates in response to predetermined input data. (See Nahi, Abstract, first sentence). Nahi provides web browser functionality, such as unencoding, decryption, and decompression, at a host computer that is separate from the portable display devices. (See Nahi, col. 13, ll. 5-15). As such, Nahi does not execute a web browser as a thin client on the portable device. Neither Smith nor Nahi teach or

suggest providing a consumer with an enhanced interactive interface in the form of a browser executed as a thin client using a markup language to present hypertext links to the consumer to allow the consumer to interactively manage navigation within the browser to make purchasing decisions at a fixed-location fuel dispenser.

Accordingly, Applicant respectfully submits that the rejection of claims 29, 49, and 58 should be withdrawn for at least the reasons specified above. Further, dependent claims 30-35 and 50-57 each depend from one of independent claims 29 and 49. Accordingly, Applicant respectfully submits that the rejection of claims 30-35 and 50-57 should also be withdrawn for at least the same reasons. As such, Applicant respectfully submits that all claims are in proper condition for allowance and requests notice of the same at the earliest possible date.

Although not required since the Patent Office has not established a *prima facie* case of obviousness, Applicant offers the following additional arguments against the rejection.

No Motivation or Suggestion to Combine

The Patent Office provides no statement of a motivation or suggestion to combine the references within the Office Action mailed September 20, 2006. As described above, in addition to showing where each and every element is taught or suggested in the combined references, which Applicant respectfully asserts that the Patent Office has not done, the Patent Office must also state a motivation to combine the references and the stated motivation must be supported with actual evidence which cannot come from Applicant's disclosure. The Patent Office has neither stated a motivation or suggestion to combine the references, nor has the Patent Office provided any evidence of a motivation or suggestion to combine the references. Accordingly, the Patent Office has failed to meet its burden of establishing a *prima facie* case of obviousness.

Further, none of Smith, Nahi, or the art generally at the time of the present invention provide any motivation or suggestion to combine the two references. As described above, Smith provides a text-based system and provides no suggestion or motivation to combine its teachings with a portable device like that in Nahi that requires a host computer to process all of its display data in order to implement a web browser that enables a customer to interact with markup language files. As evidence that Smith provides no suggestion or motivation to combine its teachings to implement a web browser that enables a customer to interact with markup language files, Applicant reiterates that Smith describes communicating only alphanumeric information.

Additionally, Nahi describes a portable device that cannot independently execute a web browser without a host computer processing all of its data prior to the data being received at the portable display device for display and provides no suggestion or motivation to combine its teachings with Smith's non-browser-based fuel dispenser interface in order to implement a web browser at a fuel dispenser that enables a customer to interact with markup language files. As evidence that Nahi provides no suggestion or motivation to combine its teachings to implement a web browser that enables a customer to interact with markup language files, Applicant reiterates that Nahi describes a system that is portable and that cannot execute a web browser without display data processing performed by a remote host computer to unencode, decrypt, and decompress browser content for the portable device. Nahi does not teach at a fixed-location fuel dispenser that executes a browser as a thin client.

The art generally does not cure any of the deficiencies associated with Smith and Nahi. As evidence that the art generally provides no suggestion or motivation to combine the two references, hypertext links embodied within a web page were not even common knowledge at the time of the present invention. Furthermore, Nahi indicates that a separate host computer is required to provide any support for a web page on the portable device of Nahi.

Accordingly, Smith, Nahi and the art generally at the time of conception of the present invention as claimed provide no suggestion or motivation to combine with any other reference in order to execute a web browser as a thin client on a fixed-location fuel dispenser that enables a customer to interact with markup language files to make purchases of other products or services. Applicant respectfully submits that any attempted combination would be improper.

Smith Teaches Away from Any Combination

Smith states that information entries received from a remote server are "preferably stored in the memory 1b wherefrom they can be individually retrieved by the occupant via the data entry console 1d." (See col. 12, ll. 19-21). In contrast to the present invention as claimed, where information is displayed "in response to receipt of a markup language from a server . . ." or by "interpreting a markup language . . .," Smith describes receiving discrete parcels of information rather than receiving or interpreting a markup language. The step of preferably storing the information received for later display teaches away from a web browser interface that presents information in real time as it is received. Therefore, Smith describes storing discrete items of

information in a memory on a vehicle in response to receipt of the discrete items of information which are not received within a markup language. Further, Smith teaches away from use of a markup language. Accordingly, any attempted combination of Smith with any reference that describes use of a web browser would be contrary to the teachings of Smith for at least these reasons.

Nahi Teaches Away From Any Combination

Nahi teaches away from any combination of the portable device of Nahi with a fuel dispenser. In contrast to the present invention as claimed, where a web browser is executed as a thin client on a fuel dispenser and information is displayed to a customer at an interactive graphical user interface associated with a fuel dispenser, Nahi describes a portable device that requires a separate host computer to pre-process all of the display data. As evidence of the fact that Nahi teaches away from the combination, Nahi teaches a portable display device operated in conjunction with a base computer for executing an application with a predetermined operational function that generates predetermined graphics data and that operates in response to predetermined input data. (See Nahi, Abstract, first sentence). As such, Nahi directly teaches away from an interactive graphical user interface capable of varied graphics at a fixed-location fuel dispenser.

Furthermore, a browser implemented within the system of Nahi must provide full processing of information to be displayed on the portable devices at a separate host computer. As such, the portable device of Nahi cannot perform all of the processing required to function as a web browser. For example, Nahi indicates that “[a] complication arises particularly in Web browser applications. There, the rendered display is content dependent In such circumstances, the host computer system 14 must provide for full processing of the received data in support of the otherwise ordinary operation of the application as needed to produce a finally determined impression of the information to be displayed by a display tablet 20.” (See Nahi, col. 13, ll. 5-15). Accordingly, Nahi’s portable devices cannot perform all of the processing, such as unencoding, decryption, and decompression, required to function as a web browser.

Additionally, Nahi teaches away from Applicant’s thin client by indicating that by allowing the user to operate a number of portable devices at end user determined locations, a new type of computer system paradigm is created that “avoids all of the disadvantages associated

with a [network computer] NC-type thin client.” (See Nahi, col. 20, ll. 9-18, bracketed text added). As such, Nahi directly teaches away from the use of Applicant’s thin client.

Accordingly, any attempted combination of Nahi with any reference that describes executing a web browser as a thin client at a fuel dispenser would be contrary to the teachings of Nahi for at least these reasons.

Impermissible Hindsight Reconstruction

Applicant respectfully asserts that the Patent Office has engaged in impermissible hindsight reconstruction in order to attempt to piece together the elements of Applicant’s claims to form the present rejection. As evidence that the Patent Office has engaged in impermissible hindsight reconstruction, Applicant respectfully submits that the arguments presented above definitely show that there is no motivation or suggestion to combine the references, either within the references themselves or within the art generally known during the 1990s.

Applicant understands that it is difficult to place oneself back in time to a period almost a decade ago. However, the legal standard is definitive. “It is impermissible to use the claimed invention as an instruction manual or ‘template’ to pieced [sic] together the teachings of the prior art so that the claimed invention is rendered obvious . . . ‘one cannot use a hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.’ ” *In Re Fritch*, 972 F.2d 1260, 1266 (Fed. Cir. 1992), citing *In re Gorman*, 933 F.2d 982, 987 and quoting *In re Fine*, 837 F.2d at 1075. Applicant respectfully asserts that all claims are in proper condition for allowance and notice of the same is respectfully requested at the earliest possible date. Applicant reserves the right to provide additional arguments if necessary in relation to any of the rejected claims.

Conclusion

In view of the discussion above, claims 29-35 and 49-58 are now in proper condition for allowance. Reconsideration and notice of allowance for all pending claims is respectfully requested at the earliest possible date. If any issues remain, the examiner is encouraged to contact the undersigned attorney of record to expedite allowance and issue.

Respectfully submitted,

WITHROW & TERRANOVA, P.L.L.C.

By:

A handwritten signature in black ink, appearing to read 'S. Terranova', with a long horizontal flourish extending to the right.

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